

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

UNITED STATES OF AMERICA,

v.

**Criminal Action No. 3:21-CR-49
(GROH)**

**JONATHAN TOEBBE and
DIANA TOEBBE,**

Defendants.

**UNITED STATES' APPLICATION TO DESIGNATE A
CLASSIFIED INFORMATION SECURITY OFFICER**

The United States of America respectfully requests that the Court designate a Classified Information Security Officer ("CISO"),¹ pursuant to the Classified Information Procedures Act, 18 U.S.C. App. III ("CIPA") and Section 2 of the Security Procedures established pursuant to Pub. L. 96-456, 94 Stat. 2025 by the Chief Justice of the United States and promulgated pursuant to Section 9 of CIPA. In support of its application, the government states the following:

1. This a criminal matter in which the grand jury has returned an indictment charging the defendants with one count of conspiring to transmit Restrict Data to another person with the intent to injure the United States and secure an advantage to a foreign nation, and two counts of transmitting Restrict Data to another person with the intent to injure the United States and secure an advantage to a foreign nation in violation of 42 U.S.C. § 2274(a).

2. The Atomic Energy Act defines "Restricted Data" as "all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear

¹ In the original Security Procedures promulgated by Chief Justice Burger, the title of the position was Court Security Officer. In the revised Security Procedures promulgated by Chief Justice Roberts, the position is now known as Classified Information Security Officer.

material; or (3) the use of special nuclear material in the production of energy,” but does not include data that has been declassified or removed from the Restricted Data category. 42 U.S.C. § 2014(y).

3. Section 1 of CIPA defines “classified information” as, among other things, “any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).”

4. To assist defense counsel, the Court, and court personnel in handling all upcoming CIPA litigation, the government requests that the Court designate Harry J. Rucker as the CISO for this case, to perform the duties and responsibilities prescribed for CISOs in the Security Procedures promulgated by the Chief Justice.

5. The government further requests that the Court designate the following persons as Alternate CISO, to serve in the event Mr. Rucker is unavailable: Daniel O. Hartenstine, Daniella M. Medel, Matthew W. Mullery, Carli V. Rodriguez-Feo, and Winfield S. Slade.

Respectfully submitted,

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

By: /s/
Jarod J. Douglas, Assistant United States Attorney
Jessica Lieber Smolar, Special Assistant United States Attorney
United States Attorney’s Office for the
Northern District of West Virginia
1125 Chapline Street, Suite 3000
Wheeling, WV 26003

/s/
S. Derek Shugert
Trial Attorney
Counterintelligence and Export Control Section
National Security Division
United States Department of Justice

CERTIFICATE OF SERVICE

I, Jarod J. Douglas, Assistant United States Attorney for the Northern District of West Virginia, hereby certify that on the 20th day of October 2021, the foregoing UNITED STATES APPLICATION TO DESIGNATE A CLASSIFIED INFORMATION SECURITY OFFICER was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Nicholas J. Compton, Esq.
Assistant Federal Public Defender
MVB Bank Building
651 Foxcroft Avenue, Ste. 202
Martinsburg, WV 25401
Counsel for Defendant Jonathan Toebe

Edward B. MacMahon, Jr., Esq.
107 E. Washington Street
Middleburg, VA 20117
Counsel for Defendant Diana Toebe

Barry P. Beck, Esq.
Power, Beck & Matzureff
308 W. Burke Street
Martinsburg, WV 25401
Counsel for Defendant Diana Toebe

WILLIAM J. IHLENFELD, II
UNITED STATES ATTORNEY

By: /s/Jarod J. Douglas
Jarod J. Douglas
Assistant U. S. Attorney